

REMARKS

Responsive to the Office Action mailed April 14, 2008.

Claims 1 – 7 and 9 – 11 are under examination and pending on the merits.

Reconsideration of the Application is respectfully requested.

Double Patenting Rejections:

Applicants first wish to expressly withdraw the Terminal Disclaimer, dated January 9, 2008, which was submitted in error with the previous response.

Claims 1-5, 7, and 9-11 are provisionally rejected under the judicially created doctrine of "obviousness-type double patenting" in view of claims 1-20 of U.S. patent application no. 10/912,864.

Claims 1-5, 7, and 9-11 are provisionally rejected under the judicially created doctrine of "obviousness type double patenting" in view of claims 1, 7, 13, 19, and 26-29 of U.S. patent application no. 11/057,718.

Without acquiescing to the propriety of these rejections, Applicants respectfully point out that each of the rejections is a provisional obviousness-type double patenting rejection between two applications, since the claims of Application Nos. 10/912,864 and 11/057,718 have not in fact been patented. MPEP 804 (I)(B) (page 800-19) states,

If the "provisional" double patenting rejection in one application is the only rejection remaining in that application, the examiner should then withdraw that rejection and permit the application to issue as a patent, thereby converting the "provisional" double patenting rejection in the other application(s) into a double patenting rejection at the time the one application issues as a patent.

Accordingly, if these are the only rejections remaining in this case, Applicants respectfully request withdrawal of each of the rejections in accordance with MPEP 804 (I)(B).

Claim Rejection Under 35 U.S.C. § 103:

Claims 1-7 and 9-11 are rejected as allegedly obvious under 35 U.S.C. § 103 over Reinhart, EP 0 687 257 A1 (Reinhart). Applicants respectfully traverse this rejection for at least the following reasons.

Applicants submit that one of ordinary skill in art after reading Reinhart would not have reasonably expected that the pet food product of Reinhart would have a positive effect on animal behavior, as Applicants have used that term in the claims. As the Examiner is aware, there must have been at the time of the invention a reasonable expectation of success. *Amgen, Inc. v. Chugai Pharmaceutical Co.*, 927 F.2d 1200, 1207-1208 (Fed. Cir. 1991), *cert. denied* 502 U.S. 856 (1991)

The pending claims encompass methods for influencing behavior in an animal, the methods comprising systemically administering to the animal a diet comprising at least about 1% by weight of an omega-3 fatty acid or mixture of omega-3 fatty acids as measured on a dry matter basis.

The office action states “[i]t would have been obvious to one of ordinary skill in the art that animals treated with the pet food product of Reinhart would influence the behavior of the animals because Reinhart teaches that pet food product improved the general comfort and well-being of the animals.” (See office action at page 6). However, the office action mischaracterizes Reinhart. Reinhart actually discloses:

It will be appreciated that feeding pet animals with a diet consisting essentially of the pet food products as hereinbefore described not only reduces allergic and inflammatory conditions in the skin of the animals thereby improving the general comfort and well-being of the animals, but there is also a cosmetic effect in that the appearance of the skin of the animals is improved. In particular, by preventing and/or alleviating symptoms of skin diseases such as dermatitis and pruritis unsightly skin conditions can be avoided or diminished giving the animals an attractive, healthy appearance.

(See Reinhart at paragraph [0009]).

Thus, the phrase “improving the general comfort and well-being” disclosed in Reinhart is relative to an animal that is experiencing an allergic or inflammatory condition.

In contrast, the term “behavior” as recited by the claims includes:

behavior which can be altered for the positive by the systemic administration of omega-3 fatty acids include memory; learning; disorientation including at least one of awareness of surroundings, circling, aimless activity, inappropriate vocalization; interactions including at least one of family recognition, animal recognition, family interaction, animal interaction, greeting enthusiasm, attention seeking, response to verbal commands; activity such as agility and level of activity; irregular sleep pattern; housetraining; and any behavior associated with ARCD.

(See specification at paragraph [0009]).

Clearly, Reinhart could not teach or suggest methods of influencing behavior as recited by the instant claims based merely on Reinhart's teaching of reducing allergic and inflammatory conditions. Indeed, there must have been at the time of the invention a motivation to modify the teachings of the references cited. *Ecolochem, Inc. v. Southern California Edison Company*, 227 F.3d 1361, 1372 (Fed. Cir. 2000). Applicants respectfully submit that nothing in Reinhart teaches or suggests to one of ordinary skill in the art methods for influencing behavior in an animal as recited by the pending claims.

For at least the foregoing reasons, Applicants respectfully submit that the rejection of claims 1-7 and 9-11 as obvious under 35 U.S.C. § 103 is improper and should be withdrawn.

Conclusion:

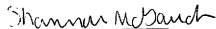
Based on the foregoing amendments and remarks, Applicants respectfully submit that the claims are in condition for allowance, which allowance is earnestly solicited.

If, in the opinion of the Examiner, a telephone conference would advance prosecution of the Application, the Examiner is invited to telephone the undersigned attorney.

No fee is believed due for this submission. However, should any fee be required, please charge any shortage in fees or credit any excess fees during the entire pendency of this Application to Deposit Account Number 50-2957.

Respectfully submitted,

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